

Letter of Findings Number: 06-0123
Consumer Use Tax
Tax Period: 2003

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ISSUES

I. Sales and Use Tax – Imposition

Authority: [IC 6-8.1-5-1\(b\)](#), [IC 6-2.5-2-1](#), [IC 6-2.5-3-2\(a\)](#), [IC 6-2.5-2\(c\)\(1\)](#).

The taxpayer protests the imposition of use tax on the purchase of tangible personal property.

II. Tax Administration – Ten Percent Negligence Penalty

Authority: [IC 6-8.1-10-2.1](#); [45 IAC 15-11-2\(b\)](#); [45 IAC 15-11-2\(c\)](#).

The Taxpayer protests the imposition of the negligence penalty.

STATEMENT OF FACTS

Taxpayer purchased tangible personal property. It intended to lease this property, and therefore claimed an exemption for the sales and use tax due upon the purchase of this property. Taxpayer remitted sales tax for what it believed were lease payments. However, the Department believed that this was not a lease arrangement, and sent a bill to the taxpayer for the sales and use tax due from the purchase of the property, plus penalty and interest. Taxpayer protests this assessment.

I. Sales and Use Tax – Imposition

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. [IC 6-8.1-5-1\(b\)](#). Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. [IC 6-2.5-2-1](#). Indiana imposes a complementary excise tax, the use tax, on tangible personal property purchased in a retail transaction and stored, used, or consumed in Indiana. [IC 6-2.5-3-2\(a\)](#). Payment of sales tax at the time of purchase exempts the use of tangible personal property from the use tax. [IC 6-2.5-2\(c\)\(1\)](#).

Taxpayer claimed an exemption for sales and use tax on the purchase of the tangible personal property. It proved through sufficient evidence that the amount it had collected in sales tax from the quasi-lease payments for the property equaled or exceeded the amount that was to be paid on the sales and use tax due upon purchase of the property. The Department determined that taxpayer made a good faith effort to remit sales and use tax, that it reasonably believed that they were creating leasing arrangements, and that it met its burden of proof pursuant to [IC 6-8.1-5-1\(b\)](#). While the arrangement that taxpayer had set up to use the tangible personal property was arguably a lease, taxpayer conceded that in future arrangements, it will pay sales tax on the purchase of tangible personal property and will not collect sales and use tax on payments made for the use of that property.

FINDING

The taxpayer's protest is sustained.

II. Tax Administration – Ten Percent Negligence Penalty

DISCUSSION

The taxpayer protests the imposition of the ten percent negligence penalty pursuant to [IC 6-8.1-10-2.1](#). Indiana Regulation [45 IAC 15-11-2](#) (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at [45 IAC 15-11-2\(c\)](#) as follows:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

(1) the nature of the tax involved;

- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

The taxpayer established that its failure to pay the assessed tax was due to reasonable cause rather than negligence.

FINDING

The taxpayer's protest is sustained.

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